

COOLEY LLP
JOHN C. DWYER (136533) (jdwyer@cooley.com)
JESSICA VALENZUELA SANTAMARIA (220934) (jvs@cooley.com)
3175 Hanover Street
Palo Alto, CA 94304-1130
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

STEPHEN RICHARDS (308868) (srichards@cooley.com)
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 550-6000
Facsimile: (858) 550-6420

Attorneys for Petitioner
BLOOM ENERGY CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BLOOM ENERGY CORPORATION,

Petitioner,

V.

DWIGHT BADGER and KEITH
DAUBENSPECK,

Respondents.

No.

**DECLARATION OF STEPHEN
RICHARDS IN SUPPORT OF
BLOOM'S PETITION TO CONFIRM
ARBITRATION AWARD AND FOR
ENTRY OF JUDGMENT**

1 I, Stephen Richards, declare as follows:

2 1. I am an attorney at Cooley LLP (“Cooley”), an attorney of record for Petitioner
 3 Bloom Energy Corporation (“Bloom”). I am licensed to practice law in the State of California. I
 4 have personal knowledge of the facts set forth in this declaration. I submit this declaration in
 5 support of Bloom’s Petition to Confirm Arbitration Award filed concurrently herewith.

6 2. On September 18, 2012, in a proceeding captioned “In the Matter of Advanced
 7 Equities, Inc., Dwight O. Badger, and Keith G. Daubenspeck,” the United States Securities and
 8 Exchange Commission issued an “Order Instituting Administrative and Cease-and-Desist
 9 Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities
 10 Exchange Act of 1934 and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940,
 11 Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order.” A true and
 12 correct copy of that order is attached hereto as **Exhibit A**.

13 3. On June 27, 2014, Bloom entered into a settlement with Respondents Dwight
 14 Badger and Keith Daubenspeck. The settlement was memorialized in a pair of agreements: the
 15 Confidential Agreement (“CA”) and the Securities Acquisition Agreement (“SAA”). True and
 16 correct copies of the CA and SAA are attached hereto as **Exhibit B** and **Exhibit C**, respectively.
 17 The CA and SAA’s arbitration clauses are located at paragraph 19 of the CA and paragraph 5.3 of
 18 the SAA.

19 4. On July 20, 2018, Badger and Daubenspeck initiated an arbitration against Bloom
 20 before the American Arbitration Association (“AAA”). The AAA appointed a three-member
 21 panel (the “Tribunal”) to hear Badger and Daubenspeck’s claims. The Tribunal was comprised of
 22 (1) Hiro Aragaki, a professor of law at Loyola Law School, (2) the Honorable Chris Cottle, a
 23 retired justice of the California Court of Appeal, and (3) the Honorable Lesley Green, a retired
 24 Los Angeles Superior Court judge.

25 5. On March 16, 2021, the Tribunal issued a Final Award dismissing Badger and
 26 Daubenspeck’s claims “with prejudice” and ordering that Badger and Daubenspeck “take nothing
 27 on them.” The Final Award also ordered Badger and Daubenspeck to pay Bloom \$966,760.31 in
 28 attorneys’ fees and costs pursuant to the fee-shifting provisions in the CA and SAA’s arbitration

clauses. A true and correct copy of the Final Award is attached hereto as **Exhibit D.**

6. As of this date, Badger and Daubenspeck have not paid any portion of the award against them.

7. As of this date, no application has been made to modify, correct, or vacate the Final Award.

I declare under the penalty of perjury under the laws of the State of California and United States that the foregoing is true and correct.

Executed at San Diego, California, on this 26th day of March 2021.

Dated: March 26, 2021

COOLEY LLP

By: _____ /s/ *Stephen Richards*
Stephen Richards

Attorneys for Bloom Energy Corporation